

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

JOHN J. SMITH,)	No. ED104481
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Charles County
vs.)	
)	Honorable John F. Garvey, Jr.
LORA J. SMITH,)	
)	
Respondent.)	FILED: March 28, 2017

John J. Smith (“Smith”) appeals from the denial of his Rule 74.06(b)(4) motion seeking relief from a 2007 judgment entered by Judge Thomas J. Frawley (“Judge Frawley”) dissolving Smith’s marriage to Lora J. Smith (“Lora”). After both parties moved to modify the original judgment, Judge Frawley was disqualified in 2009 from presiding over the motion-to-modify proceedings. On appeal, Smith argues that Judge Frawley’s disqualification in the motion-to-modify proceedings conclusively established that Judge Frawley demonstrated actual bias against Smith at the time he entered the original judgment, rendering said judgment void *ab initio* and in violation of Smith’s constitutional right to a fair tribunal. Because Smith is estopped from asserting the 2009 disqualification as a challenge to the original 2007 judgment, we affirm the judgment of the trial court.

AFFIRMED.

DIVISION FOUR HOLDS: Smith is estopped from asserting the 2009 disqualification order as a challenge to the original divorce judgment. Smith’s participation in the motion-to-modify proceedings and his recognition of the trial court’s authority to modify the original divorce judgment is inconsistent with the position that he now asserts, i.e., that the original divorce judgment, and all subsequent proceedings, were void *ab initio*. Smith did not appeal the ruling in the motion-to-modify proceedings, which expressly reaffirmed the original divorce judgment. Instead, Smith waited until after a final adverse ruling in the motion-to-modify proceedings to dispute the validity of the original divorce judgment.

Opinion by: Kurt S. Odenwald, Judge
James M. Dowd, P.J., and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: John J. Smith

Attorney for Respondent: David J. Howard

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.
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